

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 821 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ILIAS JUMERATI ANSARI

Versus

STATE OF GUJARAT

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Appearance:

MR IM MUNSHI for Petitioner

MR SD PANDYA, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/07/98

ORAL JUDGEMENT

1. The appellant herein has brought in challenge the judgement and order dated 27/9/1988 recorded in Sessions Case No.114/87 by the learned Additional City Sessions Court, Court No.15, Ahmedabad whereby the appellant on having been found guilty of offence punishable u/s 326 of the Indian Penal Code (hereinafter referred to as 'the Code') was ordered to suffer R.I. for four years and to pay fine of Rs.250/- and in default of payment of fine,

to undergo further R.I. for two months.

2. The brief facts giving rise to this appeal are as under :

2.1 On 3/1/1987, at about 8.15 p.m., injured Nasir Hussein Anwar Hussien who was serving in Sahyog Textile, was reading the notice board, at that time, the appellant gave a blow on the back part of his head with thick Danda, as a result of which, the victim fell down and he was bleeding and then the injured was removed to the hospital and from the hospital, the constable on duty informed the police station vide exh.18 and pursuant to the same, the P.S.I. Mr. Dadiya went to the hospital and recorded the complaint lodged by Asgar Ilyas.

2.2 On the basis of the said complaint, the investigation was put in motion, statements of various witnesses were recorded, panchnamas were prepared, clothes of the injured were recovered, blood stains were collected from the scene of occurrence and then, same were sent to the Forensic Science Laboratory for analysis. After receipt of report from the Forensic Science Laboratory and on completion of investigation, a chargesheet was submitted against the appellant in the Court of Metropolitan Magistrate for commission of offence punishable u/s 307 of the Code and the learned Metropolitan Magistrate, Ahmedabad, in turn, committed the case to the Court of City Sessions Judge, as the offence committed by the appellant was exclusively triable by the Court of Sessions. The learned Sessions Judge framed the charge against the appellant, to which appellant pleaded not guilty and claimed to be tried. Hence, he was put on trial.

2.3. The learned Judge recorded ocular testimony of the injured and the other witnesses and considered the documents like panchnama, medical certificate, report of the FSL and came to the conclusion that the appellant has committed offence u/s 326 and not u/s 307 of the Code and therefore, recorded the conviction accordingly and sentenced the appellant as aforesaid.

3. Mr.I.M.Munshi, learned counsel appearing for the appellant strenuously contended that, on overall appreciation of evidence, no conviction under section 326 of the Code can be sustained. If we accept the evidence in toto, in that case also, at the most the appellant can be convicted u/s 325 of the Code and not 326. In this regard, he has drawn my attention on the evidence of the injured witness as well as medical evidence of two

doctors.

4. Now, on having looked at the evidence of the injured witness Nasir Hussein PW-2 which is recorded at exh.10, he has inter alia unequivocally stated that the appellant accused gave him blow of Danda which was meant for lifting beam on the back portion of his head. Thereafter, he became unconscious and he was removed to the hospital. In view of the aforesaid evidence, it cannot be gainsaid that the accused gave a single blow of Danda to the victim on the back portion of his head. Therefore, undisputedly the instrument for shooting, stabbing or cutting was not used.

5. Now, on having perusal of the evidence of Dr. Haren Himmatlal Parikh, PW-8 at exh.26 who inter alia stated that he was performing his duty as the C.M.O. in the hospital at the relevant time and he examined the victim Nasir Hussein Anwar Hussein. He has also issued the certificate which is on record at exh.27. On conjoint reading of the evidence as well as the certificate, the following injuries were found on the person of the injured :-

- (a) Bleeding from both the ears.
- (b) CLW on occipital region  
1" x 1/2" bone deep
- (c) X ray skull linear fractured in right  
parietooccipital regional

6. The injured was examined by the Expert Neuro Surgeon Dr. Dipakkumar Devkarandas Patel, Senior Resident Neuro Surgery, Civil Hospital, Ahmedabad, PW-9 whose evidence is recorded at exh.32. He has inter alia testified that the injured was admitted in the Civil Hospital on 3/1/1987 and he has examined him on 5/1/87 and found one injury on the parietal region. He has unequivocally admitted that the skull fractures are of many types and the fracture which was caused to the injured was not a serious one and the patient cannot die on account of such fracture.

7. On overall appreciation of the aforesaid evidence, it cannot be disputed that the injured received the linear fracture by the accused who gave him blow with Danda and the fracture was not serious in nature. Therefore, it can be said that the blow was given with hard and blunt substance and not with a sharp cutting instrument and the fracture was also not serious. Therefore, I agree with the submission advanced by Mr. Munshi, learned counsel for the appellant that, at the

most the appellant accused can be held guilty for offence punishable under section 325 and not 326 of the Code.

8. Under the circumstances, the finding of conviction recorded u/s 326 of the Code is now altered u/s 325 of the Code.

9. Now, so far as the question of sentence is concerned, Mr. Munshi submitted that since the compromise has been arrived at between the parties and sufficient amount of compensation has been paid to the victim - injured, matter is required to be viewed from that point of view. Both, the accused and the victim injured are present before this Court today and they have also filed an application and pursis supported with affidavit seeking permission to compound the offence.

10. On having looked at the application / pursis, it could be gathered that both of them are serving in Sahayog Textiles and once upon a time, they were bosom friends and that, there was some dispute between the appellant and the father of the injured. The appellant is repenting for what he has done out of impatience and angerness. The appellant has created good relations with the injured and the matter is settled between the parties amicably. It is further stated in the pursis that the appellant is an old man of about 60 years, having a large family to maintain, and having one son mentally abnormal. The appellant has lost his services since long as the mill is closed and in that circumstances, if the appellant be sent to jail, he is likely to lose his monetary benefits admissible from the company and the family of the appellant will be put in starving and miserable condition.

11. I have also called upon Mr.S.D.Pandya, learned APP for the State of Gujarat, who has submitted that that this Court has already altered the conviction to offence under section 325 from section 326 of the Code and therefore, looking to the compromise pursis, appropriate orders may be passed so far as the quantum of sentence is concerned.

12. After having heard the learned counsel for the parties and perusing the compromise pursis and considering the factual aspects of the case, when this Court has converted the offence u/s 325 in place of section 326 of the Code and looking to the old age of 60 years of the appellant and both of them were working in the same mill and they have amicably settled the matter and particularly in view of the provisions contained u/s

320 of the Code, offence u/s 325 can be compounded by the person to whom hurt is caused. In the facts and circumstances of the case, when the injured himself has consented to compound the matter and who is also present before this Court, there is no reason not to accede the request made on his behalf.

13. Resultantly, when the matter is compromised between the parties, the application for compromise is accepted and the accused is entitled to be acquitted of the offence u/s 325 of the Code.

14. In the premises, the appeal is partly allowed. The appellant accused is acquitted of the offence u/s 325 of the Indian Penal Code. The fine, if any, paid by the appellant be refunded. His bail bonds shall stand cancelled and the sureties are discharged.

15. Application and compromise pursis signed by both the parties be retained on record of this case.

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